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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

Federal Communications Commission  
Office of the Secretary

In re Applications of	)	MM Docket No. 92-116
	)	
UHURU COMMUNICATIONS, INC.	)	File No. BRED-910230WF
	)	
For Renewal of License	)	
of Station WUCI-FM	)	
Binghamton, New York	)	
	)	
and	)	
	)	
WSKG PUBLIC	)	File No. BPED-910501MB
TELECOMMUNICATIONS COUNCIL	)	
	)	
For a Construction Permit	)	
For a New FM Station	)	
Binghamton, New York	)	
	)	
ARROWHEAD CHRISTIAN	)	File No. BPED-910501MC
CENTER	)	
	)	
For a Construction Permit	)	
For a New FM Station	)	
Binghamton, New York	)	

To: Administrative Law Judge  
Arthur I. Steinberg

**MASS MEDIA BUREAU'S OPPOSITION  
TO MOTION TO ENLARGE ISSUES**

1. On July 13, 1992, WSKG Public Telecommunications Council (WSKG) filed a petition seeking the designation of financial, technical and legal qualifications issues against Uhuru Communications, Inc. (Uhuru). The Mass Media Bureau hereby offers its comments opposing WSKG's petition.

**Financial Issue**

2. WSKG seeks an issue to determine whether Uhuru is financially qualified to return its licensed station to the air

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and operate it for three months. In support of the requested issue, WSKG cites the fact that Uhuru's station has been silent since June 1, 1990, and that the National Telecommunications and Information Administration (NTIA), which had provided funding for Uhuru, seized the station's transmission and production equipment in 1990. The seizure was due to Uhuru's default under a grant from that Agency, and a report by the Counsel to the Inspector General of the U.S. Department of Commerce which shows that Uhuru was in financial distress. Moreover, WSKG contends, in 1990 Uhuru equipment was seized by a local Sheriff and in 1989 Uhuru was evicted from its transmitter site for failure to make rental payments. WSKG cites Federal Broadcasting System, 62 FCC 2d 861 (1977) where the Review Board, on its own motion, designated a financial issue based on repeated requests by a renewal applicant to remain silent. WSKG also cites a number of cases for the proposition that renewal applicants, as well as applicants for new facilities, must be financially qualified.

3. The Bureau does not disagree with WSKG that renewal applicants must be financially qualified. The Bureau does, however, disagree with WSKG that a financial issue is warranted against Uhuru. In the Bureau's opinion, if Uhuru is off the air for financial reasons, as WSKG contends, then that fact may be explored under the pending Issue 1, which seeks to determine whether Uhuru is qualified to be a Commission licensee in light of its apparent violation of 47 C.F.R. Sections 73.1740 and/or

73.1750.<sup>1</sup> Moreover, although WSKG is correct that in Federal Broadcasting, the Board added a financial issue against a renewal applicant that was silent, that case did not involve a noncommercial applicant nor was there an issue already pending based on essentially the same facts. The Commission's policy with regard to the financial showing which noncommercial applicants must make is far different than its policy with regard to commercial applicants. For example, the Commission has held that where a noncommercial applicant for a construction permit is relying on a grant from NTIA or other appropriate source, the applicant is required to do no more than advise the Commission when the funds are committed or appropriated. KOED, Inc., 5 FCC Rcd 1784, 1785 (1990). Uhuru is a renewal applicant and WSKG fails to cite any case requiring that a noncommercial renewal applicant demonstrate its financial qualifications to be a Commission licensee. Accordingly, WSKG's request for such an issue against Uhuru should be denied.

#### Technical Qualifications Issue

4. WSKG also contends that Uhuru is technically unqualified to remain a licensee because it retains no transmission or studio equipment and has no studio or transmitter site. Also, WSKG contends, Uhuru has no office and has been unable or unwilling to produce its public inspection files. Thus, WSKG

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<sup>1</sup> In adding Issue 1, the Hearing Designation Order, 7 FCC Rcd 3507 (1992), relied on many of the same facts that WSKG now cites in support of its request for a financial issue.

contends, Uhuru seeks to renew a bare license.

5. There is no need for this issue. Again, in designating Issue 1, the HDO considered the fact that much of the Uhuru's equipment had been reclaimed by NTIA, which precludes the licensee's ability to broadcast. There is no need for a separate issue on the Uhuru's technical ability to operate. This matter, like the requested financial issue, is already subsumed in designated Issue 1, which was predicated on the same facts as discussed in paragraph 2 of the HDO.

#### Legal Qualifications Issue

6. WSKG contends that this issue is warranted because Uhuru lacked candor by not disclosing to the Commission the dire financial circumstances which affected Uhuru's capacity to operate its station. In addition, according to WSKG, Uhuru's renewal application sought to mislead the Commission into believing its station was still on the air by asserting that Uhuru "currently operates" with an all volunteer staff. WSKG cites a number of cases for the proposition that the Commission requires candor from its licensees and George E. Cameron Jr. Communications, 93 FCC 2d 789 (Rev. Bd. 1983) for the proposition that by failing to reveal adverse financial information, an applicant is guilty of misleading the Commission. Finally, WSKG contends, the issue is warranted because of Uhuru's inept compliance with Commission rules. In support of this latter

contention, WSKG cites Uhuru's failure to maintain an accessible public file, change of tower site without Commission permission, going silent without Commission permission and failure to file annual employment report since 1986.

7. WSKG really seeks two issues; misrepresentation and ineptness. With regard to misrepresentation, WSKG cites no requirement that Uhuru report its financial situation to the Commission. In Cameron the applicant had submitted a financial statement to establish that it was capable of financing a new FM station. That financial statement was found to have been "drastically inflated" and therefore misleading. 93 FCC 2d at 803-12. Here, no misleading financial information was submitted by Uhuru. WSKG's further claim that WSKG tried to mislead the Commission into believing it was currently operating by stating that it "currently operates" with an all volunteer staff ignores the fact that the statement was submitted in response to Question 4 of Uhuru's renewal application (FCC Form 303-S) which seeks an explanation for a station's failure to file an Annual Employment Report. Thus, at Question 4, Uhuru was not claiming to be currently operating its station, but rather explaining that, because it operated with volunteers, it had not filed an Annual Employment Report. A misrepresentation issue is not warranted under these facts.

8. With regard to ineptness, such an issue is only

warranted where there is a clear pattern of carelessness or negligence. Mark L. Wodlinger, 62 RR 2d 888 (ALJ 1988). No such pattern has been shown to exist here. Moreover, with regard to WSKG's public file allegations, it is well established that a public file violation must be due to intentional misconduct in order to implicate an applicant's basic qualifications. Millard V. Oakley, 45 RR 2d 662, 663 (1979). Here, in response to requests made in mid to late April by persons associated with WSKG, a representative of Uhuru apparently did offer to make the station's public file available on May 1, 1992. Apparently WSKG's representatives did not accept the offer. Clearly, under these circumstances, where there was no intent to conceal the file, no issue is warranted.<sup>2</sup>

9. WSKG has also failed to demonstrate that Uhuru operated from a new tower without FCC permission. The affidavit of Charles F. Mulvey, on which WSKG relies, merely states that the tower he visited was the "tower from which WUCI was last know (sic) to operate after moving from the Stainless tower" Significantly, Mulvey does not claim to have personal knowledge that WUCI actually broadcast from that tower. See, Section 1.229(d) of the Commission's Rules. To the extent that WSKG seeks the issue based on WUCI having gone silent, as noted, supra, that matter already is in issue. Finally, Uhuru, in its renewal application explained that it did not file an Annual

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<sup>2</sup> Also, no public file issue would be warranted because no prejudice to the public has been shown. Rust Communications Group, Inc., 57 FCC 2d 873, 878 (Rev. Bd.).

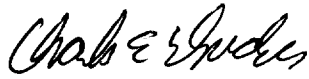
Employment Report because it "currently operates with an all volunteer staff." (See Attachment 2 to WSKG's motion). Even if Uhuru were required to file such a report, clearly there has been no attempt to conceal its failure to file. Nor has there been any motive suggested for failing to file.<sup>3</sup> Under these circumstances, no issue is warranted. See Character Qualifications, 102 FCC 2d 1179, 1232 (1986), eliminating comparative character evaluations in comparative renewal proceedings. The purpose of a "character inquiry is to make predictive judgments relating to an applicant's propensity to deal honestly with the Commission...." Id.


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<sup>3</sup> Generally, stations which operate with all volunteers do not have employees and, consequently, are not required to file employment reports. See Section 73.3612 of the Commission's Rules.

10. In sum, the Bureau opposes addition of all of the issues requested by WSKG.

Respectfully submitted,  
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July 28, 1992



**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 28th day of July 1992, sent by regular United States mail; U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Motion to Enlarge Issues"** to:

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